

E0-1731



**SURFACE TRANSPORTATION BOARD**  
**Washington, DC 20423**

*Office of Environmental Analysis*

July 14, 2011

Mr. Justin Cook  
Resource Protection & Review  
Ohio Historic Preservation Office  
800 East 17th Avenue  
Columbus, Ohio 43211

Re: Docket No. AB 290 (Sub-No. 290X), Norfolk Southern Railway Company –  
Abandonment Exemption – in Lucas County, Ohio

Dear Mr. Cook:

The Surface Transportation Board's (Board) Office of Environmental Analysis (OEA) has completed its review of Norfolk Southern Railway Company's proposed abandonment of an approximately 2.82-mile rail line in Lucas County, Ohio, pursuant to Section 106 of the National Historic Preservation Act, 16 U.S.C. §470f (NHPA).

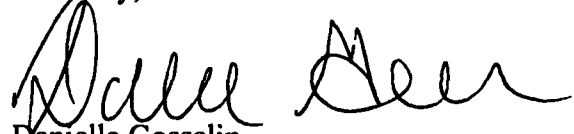
As you know, three bridges on the line were found to be eligible for listing on the National Register of Historic Places. After consultation with your office and the railroad, OEA has concluded that the proposed abandonment would likely have an adverse effect on these historic resources. As a result of the Section 106 consultation process, OEA developed a Memorandum of Agreement (MOA), which I have enclosed for Mark Epstein's signature. Once the MOA is signed by the signatory parties, the NHPA review will be complete. Thereafter, the Section 106 condition imposed in this proceeding will be removed.

I have enclosed one (1) copy of the MOA for Mark Epstein's signature. In the interest of completing the Section 106 process in a timely manner, please have Mr. Epstein sign the document and return it to me at the following address as soon as possible:

Danielle Gosselin  
Office of Environmental Analysis  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20423

If you have questions regarding the MOA or require further information, please do not hesitate to contact me at (202) 245-0300. Thank you very much for your help.

Sincerely,

A handwritten signature in black ink, appearing to read 'Danielle Gosselin', written in a cursive style.

Danielle Gosselin  
Attorney Advisor  
Office of Environmental Analysis

Enclosure

cc (w/out enclosure): Robert Wimbish, Norfolk Southern

**MEMORANDUM OF AGREEMENT  
BETWEEN  
THE SURFACE TRANSPORTATION BOARD,  
NORFOLK SOUTHERN RAILWAY COMPANY, AND  
THE OHIO HISTORIC PRESERVATION OFFICE**

**REGARDING DOCKET NO. AB 290 (SUB-NO. 290X)  
NORFOLK SOUTHERN RAILWAY COMPANY  
– ABANDONMENT EXEMPTION –  
IN LUCAS COUNTY, OH**

**WHEREAS**, on June 9, 2008, Norfolk Southern Railway Company (NSR) filed a verified notice of exemption with the Surface Transportation Board (Board) under 49 C.F.R. Part 1152, subpart F, invoking the class exemption from the prior approval requirements of 49 U.S.C. §10903 to abandon an approximately 2.82-mile rail line (the Line) between milepost TW 0.0 and milepost TW 2.82 in Toledo, Lucas County, OH (Rail Line Abandonment); and

**WHEREAS**, in a decision served on July 28, 2008, the Board imposed a condition for the proposed abandonment that requires NSR, as a prerequisite to the commencement of salvage activities, to retain its interest in and take no steps to alter the historic integrity of all historic properties, including sites, buildings, structures, and objects within the proposed abandonment's right-of-way that are eligible for listing or are listed in the National Register of Historic Places (NRHP) until completion of the Section 106 process of the National Historic Preservation Act, 16 U.S.C. §470f (NHPA); and

**WHEREAS**, the Board has determined that the Rail Line Abandonment constitutes an Undertaking, as defined in 36 C.F.R. §800.3(a); and

**WHEREAS**, for abandonments, the railroad right-of-way and properties immediately adjacent to it constitute the area of potential effects, defined at 36 C.F.R. §800.16(d) as "the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist." In this case, the right-of-way ranges from 10 to 100 feet on either side of the center line of track; and

**WHEREAS**, the Ohio Historic Preservation Office (OHPO), acting in its designated capacity as the State of Ohio's Historic Preservation Officer, has advised in letters to NSR dated December 24, 2009, and December 21, 2010, that three railroad bridges along the Line, located, respectively, at milepost TW-0.54, TW-0.62, and TW-0.99 (individually, the Bridge, and, collectively, the Bridges) are eligible for listing in the NRHP, and that removal of each Bridge will result in an adverse effect on historic properties; and

**WHEREAS**, OHPO, in its December 21, 2010 letter, stated that in this case, OHPO was "not concerned about the effects of track removal on adjacent properties," and further stated that OHPO was of the opinion that "indirect effects that the proposed abandonment will have on adjacent historic properties will NOT meet the criteria of adverse effect;" and

**WHEREAS**, the Board, through its Office of Environmental Analysis (OEA), consulted with OHPO pursuant to regulations at 36 C.F.R. Part 800, effective August 30, 2004, implementing Section 106 of the NHPA, and determined that the proposed abandonment will have an adverse effect on the above-mentioned Bridges; and

**WHEREAS**, in a letter dated January 25, 2011, OEA notified the Advisory Council on Historic Preservation (Advisory Council) of the adverse effect on the Bridges in accordance with 36 C.F.R. §800.6(a)(1); and

**WHEREAS**, in a letter dated February 2, 2011, the Advisory Council declined to participate in the negotiation of this Memorandum of Agreement (MOA); and

**WHEREAS**, pursuant to 36 C.F.R. §800.6, OEA has consulted with OHPO and NSR regarding ways to avoid, minimize, or mitigate potential effects to the historic resources as a result of abandonment, and the Board, OHPO, and NSR have all agreed upon the measures described below under “Stipulations;” and

**WHEREAS**, NSR owns the historic property (the Bridges) that will be adversely affected by the proposed Undertaking, and has participated in the consultation process, and, pursuant to 36 C.F.R. §800.6(c)(2)(iii), OEA has invited NSR to be a signatory party in this MOA that will guide taking such adverse effects into account; and

**WHEREAS**, the definitions listed in 36 C.F.R. §800.16 are applicable throughout this MOA.

**NOW, THEREFORE**, the Board, NSR, and OHPO agree that this Undertaking shall be implemented in accordance with the following stipulations in order to take into account the effects of the Undertaking on historic properties, and further agree that these stipulations shall govern the Undertaking and all of its parts until this MOA expires or is terminated. Additionally, the Board, NSR and OHPO agree that the execution of this MOA by the parties hereto and its subsequent submission to the Advisory Council in accordance with 36 C.F.R. §800.6(b)(1)(iv), shall, pursuant to 36 C.F.R. §800.6(c), be considered to be an agreement with the Advisory Council for purposes of the NHPA. Execution and submission of the MOA, and implementation of its terms, are evidence that the Board has afforded the Advisory Council an opportunity to comment on the proposed action relating to the Line, and that the Board has taken into account the effects of the abandonment on historic properties and is satisfying the requirements of Section 106 of the NHPA.

## **STIPULATIONS**

The Board shall ensure that the following mitigation measures are carried out:

### **I. ADVERTISING OF BRIDGES’ AVAILABILITY**

**A.** NSR has arranged for the posting of notice of the Bridge’s availability for acquisition by interested persons on the Reusable Bridges webpage of the Ohio Department of Transportation (ODOT) Division of Transportation Development – Office of Environmental

Services (DTD-OES) for a period of not less than sixty (60) days. Immediately following execution of this MOA, NSR shall provide OEA and OHPO with confirmation of the Bridges' posting from ODOT DTD-OES.

**B.** In the event an interested person(s) enters into an agreement with NSR for the acquisition and relocation/reuse of any or all of the Bridges conforming to the *Secretary of the Interior's Standards for the Treatment of Historic Properties*, 36 C.F.R. Part 68, and, in accordance with such agreement(s), any or all of the Bridges are relocated/reused, then the parties to this MOA agree that, with respect to such Bridge(s), no further Section 106 mitigation efforts are necessary or required, that NSR need not take any further mitigation action with respect to that Bridge(s), and that, with respect to such Bridge(s), the terms of this MOA as set forth below shall be deemed fully satisfied.

**C.** If any Bridge or all of the Bridges are not acquired for relocation/reuse, then for such Bridge(s), NSR shall prepare the recordation package specified in Stipulation II, below.

## **II. PREPARATION OF RECORDATION**

**A. Recordation Package contents.** For any Bridge(s) not acquired for relocation/reuse, NSR shall prepare a recordation package equivalent to Historic American Buildings Survey (HABS)/Historic American Engineering Record (HAER) Documentation Level II requirements, as established in the *Secretary of the Interior's Standards and Guidelines for Architectural and Engineering Documentation: HABS/HAER Standards*, originally published in the *Federal Register*, Vol. 48, No. 190, (Thursday, September 29, 1983), pp. 44730-34, and available online at <http://www.nps.gov/hdp/standards/standards.pdf>. The recordation shall include:

- 1. Black and white photographs providing an overall view of each Bridge in its environment and views of its significant components accompanied by details of each Bridge's technical specifications, features, dimensions, and approximate date of construction, if available.** Photographic documentation shall be produced in compliance with the minimum camera requirements set forth in the federal standards for HABS/HAER referenced above, and large format (4x5 or larger negative size) professional black and white photographs shall be processed for archival permanence, and should include a photo index.
- 2. Original construction drawings of the structures, if available, and selected drawings photographically reproduced in accordance with the photographic specifications of HABS/HAER.** The preferred negative format for reproducing drawings is 8 x 10;" however, a 4 X 5" format may be used as long as the prints are enlarged to 8 x 10" in order to maximize their legibility.
- 3. A written historical and descriptive report for each Bridge prepared according to the "Outline Format" of the *Historic American Engineering Record Guidelines for Historical Reports, 2008, updated 2010* available online at <http://www.nps.gov/hdp/standards/HAER/HAERHistoryGuidelines2011.pdf>.** The

report shall include a detailed description of the Bridges and a brief discussion of the contextual history of each Bridge to the extent that such information is available to NSR.

**B. Standards.** All documentation shall be completed by an architectural historian meeting the *Professional Qualification Standards* in the *Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines* (48 FR 44738-44739).

**C. Completion schedule.** NSR shall complete an initial draft of the aforementioned recordation package(s) and related written documentation within one year of the execution of this MOA.

1. *Comment Period.* Following receipt of the initial draft(s), OHPO will have thirty (30) days to comment on the documentation, and to supply such comments to OEA and NSR. NSR and OEA shall modify the documentation in accordance with any OHPO comments as OEA, in its discretion, may deem appropriate. Failure of OHPO to comment within the specified period shall be deemed by the Board to constitute OHPO approval and acceptance of the documentation.
2. *Distribution of Final Report.* Within sixty (60) days of the expiration of the comment period established in Stipulation II-C-1, above, NSR shall send copies of the recordation package(s) required by Stipulation II-A, above, as modified (if at all) pursuant to Section II-C-1, above, to OEA (1 copy), OHPO (1 copy), and the State Library of Ohio (3 copies, as specified below).
  - a. NSR shall submit three (3) copies of the final recordation package – two (2) bound copies and one (1) unbound copy – to the State Library of Ohio at the following address:

Ms. Ashley L. Hall  
Government Information Services  
The State Library of Ohio  
274 East First Avenue  
Columbus, OH 43201

The phrase “Submitted by the Ohio Historic Preservation Office” must appear on the title page of the recordation package to allow library staff to identify the Ohio SHPO as the State agency from which the document originated and process it for entry into the collections.

The State Library will catalog the recordation package on the Online Computer Library Center (OCLC) system. This will make the recordation package available to anyone using WorldCat, FirstSearch, or the State Library’s catalog. The unbound copy of the recordation package will be placed in the State Library’s rare book room. Of the two (2) bound copies, one may be circulated through OhioLink or according to the State Library’s policy while the other will be non-circulating.

### **III. TIMING OF MITIGATION AND AUTHORIZATION TO PROCEED**

The Board shall ensure that NSR conducts the measures set forth in Stipulations I and II to mitigate the adverse effects of the rail line abandonment, and in particular the removal of the Bridges. NSR shall notify the Board and OHPO in writing when it completes the mitigation measures by providing copies of specified deliverables. Upon receiving from NSR confirmation of the posting of the Bridges' availability required by Stipulation I-A, above, and notification that copies of the recordation package(s) have been sent as required by Stipulation II-C-2, above, the Board shall authorize NSR to commence with removal of the Bridges.

### **IV. UNANTICIPATED DISCOVERIES**

If the Board determines after Bridge removal/construction has commenced that the Undertaking will affect a previously unidentified property that may be eligible for inclusion in the NRHP, then the Board will address the discovery in accordance with 36 C.F.R. §800.13(b)(3). The Board may assume that the discovered property is eligible for the NRHP in accordance with 36 C.F.R. §800.13(c).

### **V. ADMINISTRATIVE PROVISIONS**

**A. Dispute Resolution:** Should any signatory party to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, the Board shall consult with such party to resolve the objection. If the Board determines that such objection cannot be resolved, the Board will:

1. Forward all documentation relevant to the dispute, including the Board's proposed resolution, to the Advisory Council. The Advisory Council shall provide the Board with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the Board shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the Advisory Council, signatories and concurring parties, and provide them with a copy of this written response. The Board will then proceed according to its final decision.
2. If the Advisory Council does not provide its advice regarding the dispute within the thirty (30) day time period, the Board may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the Board shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the MOA, and provide them and the Advisory Council with a copy of such written response.
3. The Board's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

**B. Amendments:** This MOA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the Advisory Council.

**C. Termination:** If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation V-B, above. If within thirty (30) days an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories.

Once the MOA is terminated, and prior to work continuing on the undertaking, the Board must either (a) execute an MOA pursuant to 36 C.F.R. § 800.6, or (b) request, take into account, and respond to the comments of the Advisory Council under 36 C.F.R. § 800.7. The Board shall notify the signatories as to the course of action it will pursue.

**D. Duration of the MOA:** This MOA will expire if its stipulations are not carried out within 15 months from the date of its execution. At such time, and prior to work continuing on the undertaking, the Board shall either (a) execute a MOA pursuant to 36 C.F.R. § 800.6, or (b) request, take into account, and respond to the comments of the Advisory Council under 36 C.F.R. § 800.7. Prior to such time, the Board may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation V-B above. The Board shall notify the signatories as to the course of action it will pursue.

**E. Effective Date:** This MOA will take effect on the date that it has been executed by the Board, NSR, and OHPO.

## **VI. SCOPE OF AGREEMENT**

This MOA is limited in scope to the Rail Line Abandonment, and, more particularly, to the three Bridges located along the Line, and it is entered into solely for purposes of historic impacts mitigation associated with the Bridges.

**EXECUTION** of this MOA by the Board, NSR, and OHPO; its transmittal to the Advisory Council; and subsequent implementation of its terms, evidences that the Board has afforded the Advisory Council a reasonable opportunity to comment on the Undertaking and its effects on historic properties, that the Board has taken into account the effects of the Undertaking on historic properties, and that the Board has satisfied its responsibilities under Section 106 of the NHPA and applicable implementing regulations.



**SIGNATORY PARTIES:**

**SURFACE TRANSPORTATION BOARD**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Victoria Rutson  
Director, Office of Environmental Analysis

**OHIO HISTORIC PRESERVATION OFFICE**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Mark J. Epstein  
Department Head, Resource Protection and Review

**NORFOLK SOUTHERN RAILWAY COMPANY**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Marcellus J. Kirchner  
Director, Strategic Planning